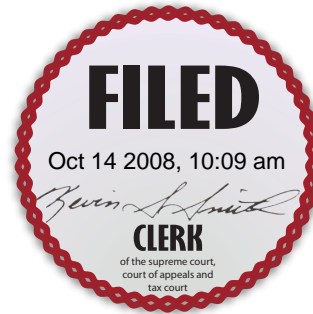


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANDREW GERMANY,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

))))))))))

No. 49A04-0802-CR-116

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 10
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0711-CM-246179

October 14, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Andrew Germany (Germany), appeals his conviction for resisting law enforcement by force, as a Class A misdemeanor, Ind. Code § 35-44-3-3.

We affirm.

ISSUE

Germany presents one issue for our review: Whether the State presented sufficient evidence to support his conviction.

FACTS AND PROCEDURAL HISTORY

The evidence most favorable to the trial court's judgment is as follows. At approximately 10:30 p.m. on November 16, 2007, Officer Danny Reynolds of the Indianapolis Metropolitan Police Department (Officer Reynolds) was dispatched to deal with a disturbance at a church involving a group of about 150 youths. At some point, Officer Reynolds went to the front porch of a nearby house to assist other officers who were working to break up a fight. The other officers were on the porch attempting to handcuff Germany's brother, Donald, and there was a group of people in the front yard, so Officer Reynolds "stood on the stairway of the porch to keep others from interfering in what [the other officers] were doing." (Transcript p. 7).

As Officer Reynolds was telling the group in the front yard to go home, Germany suddenly yelled, "[W]hat are you doing to my brother[?]" and "charge[d]" up the stairs, towards Officer Reynolds, "in a forceful manner." (Tr. p. 14). Officer Reynolds told Germany to stop, but Germany kept going, so Officer Reynolds pushed him back to keep him

from coming up any further. Officer Reynolds believed that Germany was “going to go through” him if he had not stopped him and that if he had not pushed Germany back, Germany would have pushed him out of the way to get to the other officers on the porch. (Tr. pp. 12, 14). As Officer Reynolds and another officer attempted to get a hold on Germany, “he was twisting around.” (Tr. p. 9). “He kept pulling away, screaming and yelling, you know, something about his brother.” (Tr. p. 9). Eventually, Officer Reynolds and another officer pushed Germany up against the porch “to immobilize him,” and Officer Reynolds held his arms while the other officer handcuffed him “because he was moving around so much.” (Tr. pp. 9-10).

On November 17, 2007, the State filed an Information charging Germany with resisting law enforcement by force, as a Class A misdemeanor, I.C. § 35-44-3-3. On January 28, 2008, the trial court held a bench trial and found Germany guilty as charged. The trial court sentenced him to jail time already served and 363 days suspended, along with sixty hours of community service.

Germany now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Germany argues that the evidence is insufficient to support his conviction for resisting law enforcement by force, as a Class A misdemeanor. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213-14 (Ind. Ct. App. 2007), *trans. denied*. We will consider

only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 214. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Under Indiana Code section 35-44-3-3(a)(1), a person who (1) knowingly or intentionally (2) forcibly (3) resists, obstructs, or interferes with a law enforcement officer (4) while the officer is lawfully engaged in the execution of the officer's duties commits resisting law enforcement, a Class A misdemeanor. For purposes of this statute, force is used when an individual directs strength, power, or violence towards police officers or makes a threatening gesture or movement in their direction. *Wellman v. State*, 703 N.E.2d 1061, 1064 (Ind. Ct. App. 1998). Germany argues that "there was no evidence that he used force that was strong, powerful or violent or that he made a threatening gesture or movement against Officer Reynolds." (Appellant's Br. p. 8). We disagree on both counts.

First, there was evidence that Germany directed strength, power, or violence towards Officer Reynolds. Specifically, Officer Reynolds testified that, as he and another officer attempted to get a hold on Germany, Germany "was twisting around." (Tr. p. 9). "He kept pulling away, screaming and yelling, you know, something about his brother." (Tr. p. 9). Eventually, Officer Reynolds and another officer pushed Germany up against the porch "to immobilize him," and Officer Reynolds held his arms while the other officer handcuffed him

“because he was moving around so much.” (Tr. pp. 9-10). This testimony supports a finding that Germany forcibly resisted Officer Reynolds.

Second, there was evidence that Germany made a threatening movement in Officer Reynolds’ direction. Here, Officer Reynolds testified that Germany “charge[d]” towards him “in a forceful manner.” (Tr. p. 14). Officer Reynolds told Germany to stop, but Germany kept going, prompting Officer Reynolds to push Germany back down the stairs. Officer Reynolds testified that he believed that Germany was “going to go through” him if he had not stopped him and that if he had not pushed Germany back, Germany would have pushed him out of the way to get to the other officers on the porch. (Tr. pp. 12, 14). This testimony supports a finding that Germany forcibly resisted, obstructed, or interfered with Officer Reynolds while he was lawfully engaged in the execution of his duties, namely, securing the scene while the other officers handcuffed Germany’s brother on the porch.¹

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to support Germany’s conviction for resisting law enforcement by force.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.

¹ Germany testified at trial and claims on appeal that he approached the porch because the officer had a gun pointed at Donald’s head. When Officer Reynolds was asked whether the other officers had a gun drawn on Donald Germany, he responded, “Not to my knowledge.” (Tr. p. 13). Even if it is true that the officers had a gun drawn on Donald, that does not justify Germany’s actions. While we understand why seeing a sibling with a gun to his or her head would be a cause for serious concern, such a fact would make it all the more vital that the officers be allowed to perform their duties without outside interference. Germany’s actions served to escalate an already precarious situation.